

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

In re: OHIO EXECUTION
PROTOCOL LITIGATION,

:

Case No. 2:11-cv-1016

District Judge Edmund A. Sargus, Jr.
Magistrate Judge Michael R. Merz

This Order relates to all Plaintiffs.

**AGREED ORDER REGARDING EXECUTION
MATERIALS**

STATUS OF PRESERVED EXECUTION MATERIALS

Prior to the executions of former Plaintiffs McGuire, Phillips, Otte, and Van Hook, this Court ordered that the Defendants photograph and preserve certain items used in or related to the executions. (ECF No. 392, PageID 11736-37 (McGuire); ECF No. 1107, PageID 42815 (Phillips); ECF No. 1232, PageID 45337 (Otte); ECF No. 1874, PageID 74624 (Van Hook)). Defendants complied with these Orders and the preserved items were in Defendants' Motion for Disposal of Used Execution Materials. (ECF No. 2846). Plaintiffs opposed this Motion (ECF No. 2945), Defendants replied (ECF No. 2958), and the Magistrate Judge granted the Motion (Decision and Order, ECF No. 2963).

As a nondispositive pre-trial order, the Magistrate Judge's order was reviewable on

objections to District Judge Sargus under Fed.R.Civ.P. 72(a). By agreement of the parties, Plaintiffs' time to object was extended several times. After engaging in good faith negotiations, the parties have come to an agreement for Defendants to transfer possession of the preserved execution materials to Plaintiffs, and for Plaintiffs to hold and keep those materials safe. Plaintiffs have also agreed not to take further action with respect to the preserved execution material without providing prior notice to counsel for Defendants with adequate time for Defendants to respond or object before the action is taken.

ORDER

Upon consideration of the Parties' agreement regarding the transfer and custody of the used execution materials, signified by their signatures on the Joint Motion to approve this Order (ECF No. 3164) it is hereby ORDERED:

1. Delivery of used execution materials. Not later than August 28, 2020 the parties shall meet and confer to ensure that all of the used execution materials preserved by Defendants are properly sorted and securely packaged for transit. Once they are properly and securely packaged, a designated attorney from the Columbus office of the Federal Public Defenders Office for the Southern District of Ohio (FPD) will take possession of these materials from one of Defendants' designated attorneys from the Office of the Ohio Attorney General. Both designated attorneys shall sign an agreed upon document itemizing the contents of the securely packaged materials and acknowledging transfer of possession.

2. Storage and safekeeping. The continued storage and safekeeping of the securely

packaged materials will be the sole responsibility of the designated attorney from the FPD in Columbus, Ohio. These items shall be stored in the office building of the FPD in Columbus, Ohio.

3. Notification of opening. The securely packaged used execution materials shall not be opened or handled without prior notification and approval by the Ohio Attorney General's Office, from the then current section chief of the Criminal Justice section. The FPD shall give notice to Defendants via the section chief at least seventy-two hours prior to opening the securely packaged materials. Within seventy-two hours after receipt of FPD's notice of intent to open the secured package, the Ohio Attorney General's Office shall notify the designated attorney from the FPD if Defendants or their representatives will be present for the opening and unpackaging of these materials.

4. Disposition. Any other or further transfer or disposition of these materials is expressly prohibited without the prior written consent of Defendants' trial attorney. That consent shall not be unreasonably withheld. Should any Plaintiffs wish to have expert analysis or lab testing of any of the evidence, Defendants shall provide their written consent so long as Plaintiff(s) adhere to the notice provisions in this order, and the individual Plaintiff(s) who are requesting the testing be identified. Any use of the evidence other than analysis, testing, or as evidence to be used in this litigation is strictly prohibited.

5. Prior Filings

The Magistrate Judge's (ECF No. 2963) is VACATED. Defendants' Motion for Disposal of Used Execution Materials. (ECF No. 2846) is denied as moot. The parties' Joint Motion to approve this order (ECF No. 3164) is GRANTED.

August 13, 2020.

s/ Michael R. Merz
United States Magistrate Judge